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In the Supreme Court of the United States

WASHINGTON STATE DEPARTMENT OF SOCIAL AND HEALTH SERVICES, ET AL., PETITIONERS

v.

GUARDIANSHIP ESTATE OF DANNY KEFFELER, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF WASHINGTON

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONERS

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QUESTION PRESENTED

Whether a state agency, acting as the representative payee for a foster child who is receiving Social Security benefits, violates the Social Security Act's anti-alienation provision, 42 U.S.C. 407(a), when it uses those benefit payments to pay for the child's current needs and maintenance.

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p. 30,470 ..... 4, 12

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H.P. Rep. No. 615, 74th Cong., 1st Sess. (1935)	13, 23
H.R. Rep. No. 728, 76th Cong., 1st Sess. (1939)	23
H.R. Rep. No. 702, 95th Cong., 1st Sess. Pt. 1 (1977)	13
H.R. Conf. Rep. No. 1039, 98th Cong., 2d Sess. (1984)	18
H.R. Conf. Rep. No. 964, 101st Cong., 2d Sess. (1990)	18
H.R. Rep. No. 506, 103d Cong., 2d Sess. (1994)	18
Secretary of Health & Human Servs., *Report to Congress: High Risk Representative Payee Study* (Nov. 1992)	19
S. Rep. No. 628, 74th Cong., 1st Sess. (1935)	13, 23
S. Rep. No. 734, 76th Cong., 1st Sess. (1939)	23
S. Rep. No. 1243, 94th Cong., 2d Sess. (1976)	26
Social Security Admin.:	
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Office of Program Benefits, *Policy Instruction GS 01-00-OPB* (Mar. 29, 2000)	26
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Program Operations Manual System (2002) (*available at* http://policy.ssa.gov/aboutpoms):	
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POMS GN 00602.020(B)(3)	16
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S.S.R. (Cum. Ed. 1966-1970):	
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No. 68-18, 1968 WL 3918	14
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INTEREST OF THE UNITED STATES

This case concerns whether a state agency, appointed by the Commissioner of Social Security as a representative payee to administer the Social Security benefits of children in state foster care, may use those benefits to provide for the children's current needs and maintenance. This question affects the manner in which all fifty States administer the Social Security benefits of children in foster care. The United States has a significant interest in the proper interpretation of the Social Security Act and its implementing regulations and the proper use of federal funds disbursed under the Act. This Court previously invited the Solicitor General to file a brief expressing the views of the United States during proceedings on Washington's application to recall and stay the mandate of the Washington Supreme Court.

STATEMENT

1. Legal Framework

a. Title II of the Social Security Act (Act), 42 U.S.C. 401 *et seq.*, establishes a federal insurance program to pay cash

benefits to elderly and disabled workers and to their survivors and dependents. The Title II insurance program is "designed to prevent public dependency," *Mathews* v. *De Castro*, 429 U.S. 181, 186 n.6 (1976), by ensuring workers and their families the "income required for ordinary and necessary living expenses," 20 C.F.R. 404.508(a). A minor child may receive Title II benefits if his parent is entitled to receive such benefits, or if he is the surviving dependent of a deceased parent who was eligible for such benefits. 42 U.S.C. 402(d).

Title XVI of the Social Security Act, 42 U.S.C. 1381 *et seq.*, creates the Supplemental Security Income (SSI) program, which provides a "guaranteed minimum income level" for financially needy individuals who are aged, blind, or disabled. *Sullivan* v. *Zebley*, 493 U.S. 521, 524 (1990); see also 42 U.S.C. 1381; 20 C.F.R. 416.110. A child may receive SSI benefits if he or she is blind or disabled and lacks significant financial resources. See 42 U.S.C. 1382, 1382c; *Zebley*, 493 U.S. at 524-526.

b. Under both the Title II and SSI programs, benefits are usually paid directly to the beneficiary. The Social Security Administration (Administration), however, may pay those benefits to an individual or entity as the beneficiary's "representative payee" if doing so serves the beneficiary's interests. 42 U.S.C. 405(j)(1)(A), 1383(a)(2)(A)(i); 20 C.F.R. 404.2001, 404.2010, 416.601, 416.610. The Commissioner generally appoints a representative payee for beneficiaries who are under 18 years of age or who suffer from a physical or mental impairment that would prevent them from properly managing their payments. 20 C.F.R. 404.2010(b), 416.610(b). The regulations establish "flexible" preferences for selection of a representative payee for beneficiaries who are minors, generally giving highest priority to a natural or adoptive parent, legal guardian, or relative. 20 C.F.R. 404.2021, 416.621; Social Security Admin., Program Operations Manual

System (POMS) GN 00502.105 (2002), available at <http://policy.ssa.gov/poms.nsf/aboutpoms>. The regulations also permit a public or private "authorized social agency or custodial institution" to serve as a representative payee, but such entities are last in the "[o]rder of preference." *Ibid.*; see also 42 U.S.C. 405(j)(3)(F), 1383(a)(2)(D)(ii).[1]

Prior to appointing a representative payee, the Commissioner of Social Security must undertake an investigation to determine that certification of the particular payee "is in the interest of" the beneficiary. 42 U.S.C. 405(j)(2)(A)(ii), 1383(a)(2)(B)(i)(II). That investigation must include verification of the applicant's identity, connection to the beneficiary, and lack of relevant criminal record or prior history of misusing funds. 42 U.S.C. 405(j)(2)(B), 1383(a)(2)(B)(ii); 20 C.F.R.404.2025, 416.625. The investigation must also attempt to identify any other potential representative payees whose appointment might be preferred. See 42 U.S.C. 405(j)(2)(A)(ii), 1383(a)(2)(B)(i)(II); 20 C.F.R. 404.2020, 416.620; POMS GN 00502.000 *et seq.* The Commissioner will review evidence concerning:

> (a) [t]he relationship of the person to the beneficiary; (b) [t]he amount of interest that the person shows in the beneficiary; (c) [a]ny legal authority the person, agency, organization or institution has to act on behalf of the beneficiary; (d) [w]hether the potential payee has custody of the beneficiary; and (e) [w]hether the potential payee is in a position to know of and look after the needs of the beneficiary.

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[1] The Social Security Act generally prohibits a "creditor of [a beneficiary] who provides [the beneficiary] with goods or services for consideration" from being appointed a representative payee. 42 U.S.C. 405(j)(2)(C)(i)(III), 1383(a)(2)(B)(iii)(III). The Act excepts from this prohibition, however, "a legal guardian or legal representative of such individual," as well as "a facility that is licensed or certified as a care facility under the law of a State or a political subdivision of a State." 42 U.S.C. 405(j)(2)(C)(iii)(II) and (III), 1383(a)(2)(B)(v)(II) and (III).

20 C.F.R. 404.2020, 416.620. The Commissioner must notify the beneficiary or the beneficiary's legal guardian in advance of her intention to appoint a representative payee and provide them an opportunity to challenge the appointment in a hearing before the Commissioner, with judicial review available. 42 U.S.C. 405(j)(2)(E)(i) and (ii), 1383(a)(2)(B)(xi) and (xii); 20 C.F.R. 404.2030, 416.630.

A representative payee must spend Social Security payments "for the use and benefit of the beneficiary," in the manner and for the purposes that the payee determines "to be in the best interests of the beneficiary." 20 C.F.R. 404.2035(a), 416.635(a). The regulations specifically consider any payments used for "the beneficiary's current maintenance"—which includes "cost[s] incurred in obtaining food, shelter, clothing, medical care, and personal comfort items" —as legitimate expenditures "for the use and benefit of the beneficiary." 20 C.F.R. 404.2040(a), 416.640(a). Such payments are deemed to be in the beneficiary's best interests. 47 Fed. Reg. 30,468, 30,470 (1982) ("Benefits certified to a representative payee are considered to be used in a beneficiary's best interests if they are used for a beneficiary's current maintenance."). Under the regulations, a representative payee "may not be required to use benefit payments to satisfy a debt of the beneficiary"; however, it is permissible for a payee to satisfy such a debt "if the current and reasonably foreseeable needs of the beneficiary are met" and it is in the beneficiary's interest to do so. 20 C.F.R. 404.2040(d), 416.640(d). Finally, if the monthly benefit payment exceeds the amount used by the representative payee for appropriate expenditures, the payee must conserve or invest the balance of the monthly benefits and hold them in trust for the beneficiary. 20 C.F.R. 404.2045, 416.645.

The Social Security Act requires representative payees to submit annual reports and accountings for each individual beneficiary, consistent with a "system of accountability monitoring" adopted by the Commissioner. 42 U.S.C. 405(j)(3), 1383(a)(2)(C). In addition to those reports, the Commissioner conducts triennial site reviews of certain institutional representative payees. Social Security Admin., *Policy Instruction EM-00072* (June 1, 2000).[2] The Commissioner also can require a report at any time if she "has reason to believe that the person receiving such payments is misusing [them]." 42 U.S.C. 405(j)(3)(D), 1383(a)(2)(C)(iv). Misuse of benefits by a representative payee will result in termination of payee status, and is punishable as a felony by up to five years' imprisonment. 42 U.S.C. 405(j)(1)(A), 408(a)(5), 1383(a)(2)(A)(iii), 1383a(a)(4); 20 C.F.R. 404.2050, 416.650.

c. The Social Security Act contains an anti-alienation provision that prohibits creditors and other third parties from attaching or encumbering Social Security benefits:

> The right of any person to any future payment under this subchapter shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.

42 U.S.C. 407(a); see also 42 U.S.C. 1383(d)(1).

d. Washington provides foster care services for all children who have been removed from their parents' custody due to abuse, neglect, abandonment, or juvenile justice proceedings. Pet. App. A3-A4; see also Wash. Rev. Code Ann. §§ 13.34.030(5), 13.34.130(1)(b) (West 1993 & Supp. 2001). Before the child is placed in foster care, a court order of depenency generally will assign the Washington Department of

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[2] The Social Security Administration conducted an on-site review of petitioners' operations in August 1998 and found their performance as representative payee to be in compliance with the agency's rules. Pet. App. A77-A78. We have been informed that a second audit in November 2000 again found no defects in overall performance.

Social and Health Services (Washington) "custody, control, and care" of the child. *Id.* § 13.34.130(1)(b) (West 1993 & Supp. 2001); see also *In re Dependency of G.C.B.*, 870 P.2d 1037 (Wash. Ct. App.), review denied, 881 P.2d 254 (Wash. 1994). If the child is left in foster care for six to fifteen months and there are no reasonable prospects of parental reunification, Washington may seek an order terminating parental rights. Wash. Rev. Code Ann. § 13.34.180 (West 1993 & Supp. 2001); see also 42 U.S.C. 675(5)(E). Upon termination of parental rights, Washington will have complete legal custody and control over the child. Wash. Rev. Code Ann. §§ 13.34.200, 13.34.210 (West 1993 & Supp. 2001); see also Pet. App. A4 n.3.

Washington provides foster care services to all children who need it, which results in its supervision of more than 10,000 children in foster care annually. Pet. App. A4. In order to "render resources more immediately available to meet the needs of minor children" and to "reliev[e], at least in part, the burden presently borne by the general citizenry," Washington law renders parents financially responsible for supporting their children while in foster care. Wash. Rev. Code Ann. § 74.20A.010 (West 1993). In addition, Washington law gives petitioners the authority to use "moneys and other funds" that come into the possession of the foster child while in state custody to offset "the amount of public assistance otherwise payable to" the child. *Id.* § 74.13.060. Pursuant to that law, Washington promulgated a regulation that provides that Title II and SSI benefits "shall be used on behalf of the child to help pay for the cost of foster care received." Wash. Admin. Code § 388-70-069 (1983), repealed Wash. St. Reg. 01-08-047 (Apr. 30, 2001); see also Wash. Admin. Code § 388-25-0210 (2001) ("The department must use income not exempted to cover the child's cost of care.").

2. Factual and Procedural Background

a. As of September 1999, approximately 1500 children in Washington's foster care program were receiving Title II or SSI benefits. Pet. App. A10. For almost all of those children, the Commissioner has chosen petitioner, the Washington Department of Social and Health Services, to serve as representative payee. *Ibid.* The Department divides its responsibilities as representative payee and foster care provider between two offices, the Children's Administration and the Trust Fund Unit. *Id.* at A10-A11. The Children's Administration provides foster care placement, monitoring, and services. As part of its services, the Children's Administration will apply for Social Security benefits on a child's behalf and will offer to serve as representative payee. The Children's Administration also provides foster parents a monthly allotment to pay for the child's food, shelter, clothing, and other basic needs. *Id.* at A11-A12.

The Trust Fund Unit manages the Foster Care Trust Fund Account at the Office of the State Treasurer. All Social Security benefits received by a child in foster care are deposited into a single umbrella account, which comprises subsidiary accounts for each individual beneficiary child. Pet. App. A11. Each month, the Children's Administration provides the Trust Fund Unit with a report showing the amount of money paid for the child's maintenance. The Trust Fund Unit then transfers funds from the individual child's subsidiary account to the Children's Administration to offset or satisfy that month's cost of care. *Id.* at A12. The Trust Fund Unit's payment scheme thus "is a reimbursement process, but only in the accounting sense." *Id.* at A61. Any unused funds in a subsidiary account are conserved for the benefit of the child. *Id.* at A13.

While the Trust Fund Unit "typically" uses a child's Social Security benefits to meet basic monthly needs, the Unit has the discretion, at the request of the Children's Administra-

tion, "to allow all of the child's trust funds to be expended for extra items and special needs with nothing to be paid to Children's Administration for 'reimbursement'" of monthly foster care expenses. Pet. App. A57; see also J.A. 139, 149-179 (documenting petitioners' expenditures for special needs); Wash. Dep't of Social & Health Servs., *Trust Fund Handbook* 8-10 (1999). Petitioners "will give priority to the special needs when it is consistent with the social security regulations and when it is in the child's best interest." J.A. 195. Examples of special needs deemed to be of direct benefit to the child include orthodonture, holiday presents, a computer, athletic equipment, or a vacation. Pet. App. A57-A58; J.A. 139, 149-179. On request of the Children's Administration, the Trust Fund Unit also will conserve Social Security benefits for a child's impending emancipation or for other appropriate expenses. Pet. App. A57.

b. Respondents are foster children in Washington who receive or have received Title II or SSI benefits and for whom petitioners have served as representative payee. Respondents filed a class action suit alleging, among other things, that petitioners' use of the foster children's Social Security benefits to pay for the children's monthly maintenance needs while in foster care violates the anti-alienation rule in 42 U.S.C. 407(a) and 1383(d).

On cross-motions for summary judgment, the state trial court ruled (Pet. App. A122-A130) that petitioners' use of the Social Security benefits to meet respondents' current maintenance needs amounted to an improper alienation of those funds, prohibited by 42 U.S.C. 407. Pet. App. A130. The court enjoined petitioners from continuing that practice and ordered restitution of past Social Security benefits used to pay for foster care. *Id.* at A117-A119.

c. After initially remanding the case for further factual findings (Pet. App. A43-A45, A46-A73), the Washington Supreme Court affirmed. *Id.* at A1-A39. The court acknowledged that "[t]here is nothing ipso facto wrong with [petitioners] applying to become the representative payee," and that, in fact, the Social Security Act and its implementing regulations "explicitly contemplate" such a role. *Id.* at A25. The court also agreed that "[u]sing this money for the care and maintenance of the beneficiary * * * would indeed be in the best interest of the beneficiary." *Id.* at A28.

The court reasoned, however, that petitioners' status as representative payee "is at best immaterial to the analysis" of whether expending the Social Security benefits for care and maintenance violates the anti-alienation provision. Pet. App. A29. The court instead found it significant that, in its view, the "facial logic of [petitioners'] reimbursement scheme demonstrates a * * * relationship involving creditor-type acts, vis-a-vis foster children and their [Social Security] benefits," *id.* at A20. The court further determined that using Social Security benefits to meet the foster child's current needs was not in the child's best interests because petitioners would pay those costs if the child did not receive such benefits. *Id.* at A28. Giving the anti-alienation provision a "broad" and "expansive interpretation," *id.* at A29, A23, the court concluded that petitioners' "reimbursement process *is* 'other legal process,'" prohibited by the anti-alienation provision, *id.* at A25.

Three Justices concurred in part and dissented in part. Pet. App. A32-A39. They agreed with the majority that petitioners could not use Social Security funds to reimburse "*past due* foster care payments," but would have held that petitioners' use of Social Security funds to offset *current* foster care costs does not violate the anti-alienation provision. *Id.* at A32.

SUMMARY OF ARGUMENT

Despite the complexity of the statutory and regulatory regime, the resolution of this case is quite straightforward. Petitioners' use, as representative payee, of Social Security

benefits to pay for the costs of the beneficiaries' current needs and maintenance is expressly authorized by the Social Security Act and implementing regulations, and is not prohibited by the anti-alienation provision.

Respondents do not dispute that state welfare agencies like the Washington Department of Social and Health Services may be appointed as representative payee. The statute and regulations both say they can. Indeed, for foster children, who almost by definition lack supporting family members, the State is often the only entity available to serve as representative payee. Petitioners' application of Social Security benefits to pay for the beneficiary's current needs and maintenance, moreover, is expressly permitted by the statute and regulations, and is deemed to be in the beneficiary's best interests.

Ignoring those plain statutory and regulatory directives, the Washington Supreme Court reasoned that the payments for current needs were inappropriate because petitioners would bear the costs of foster care regardless. But that same rationale would apply to all representative payees, including parents who serve as payees and who, like petitioners, have a legal obligation to support their children from their own resources. The Court's rationale would compel parents to exhaust their own finances before using any Social Security funds to meet their child's needs, regardless of the toll that would exact on the family unit as a whole and the inherent difficulties of administering such an intrusion into the family. The Washington Supreme Court's reasoning also overlooks that the central purpose of Social Security benefits is to prevent public dependency, not to perpetuate it.

The anti-alienation provision has no application to this case. By its plain terms, the anti-alienation provision prohibits only the efforts of those outside the statutory scheme to reach benefits through the use of "legal process." Payments made, pursuant to the statutory scheme, by a duly authorized representative payee, acting on behalf of a beneficiary, for the direct use and benefit of the beneficiary bear no logical relation to "legal process." The court's contrary holding not only disregards statutory text, but also puts the Social Security Act at war with itself, by construing the anti-alienation provision to prohibit exactly what the representative payee provisions permit.

ARGUMENT

A REPRESENTATIVE PAYEE'S APPLICATION OF SOCIAL SECURITY BENEFITS TO PAY FOR THE BENEFICIARY'S MONTHLY NEEDS AND MAINTENANCE COMPORTS WITH THE SOCIAL SECURITY ACT'S TEXT, PURPOSE, AND IMPLEMENTING REGULATIONS

Petitioners' use, as representative payee, of Social Security funds to meet the beneficiary's current needs for food, clothing, shelter, and similar maintenance expenses is expressly permitted by the statutory and regulatory provisions governing representative payees. The practice is also consistent with the purpose of the Social Security benefits and the practicable functioning of this nationwide benefits program. Nothing in the text, legislative history, or purpose of the Social Security Act's anti-alienation provision speaks to, let alone forbids, petitioners' practice.

A. Petitioners' Practice Is Consistent With The Text And Purposes Of The Social Security Act's Representative Payee Provisions And Implementing Regulations

1. The statute and regulations expressly authorize petitioners' practice

The Social Security Act expressly authorizes state governmental agencies like the Washington Department of Social and Health Services to serve as representative payees. The Act identifies them as potential payees, both in

their capacity as the legal guardian of children placed in their care and as eligible state institutions. 42 U.S.C. 405(j)(2)(C)(iii)(II), (III), and (v)(II), (3)(B) and (F), (4)(B), 1383(a)(2)(B)(v)(II), (III), and (vii)(II), (C)(ii), (D)(ii). The Commissioner's implementing regulations confirm that state agencies may perform such a role. 20 C.F.R. 404.2021(b)(7), 416.621(b)(7); see also POMS GN 00502.159(B) ("An agency/court who is the legal custodian for a child is often the best payee for the child."). Indeed, the respondent class does not challenge the appointment of the Washington Department of Social and Health Services as the representative payee for children in foster care.

Petitioners' application of the children's Social Security benefits to meet their current needs for food, clothing, shelter, medical care, and similar maintenance items, moreover, epitomizes an appropriate expenditure of such funds. The regulations specifically define any payments used for "the beneficiary's current maintenance," which includes "cost[s] incurred in obtaining food, shelter, clothing, medical care, and personal comfort items," as legitimate expenditures "for the use and benefit of the beneficiary." 20 C.F.R. 404.2040(a), 416.640(a). Such current maintenance payments are deemed to be in the beneficiary's "best interests." 47 Fed. Reg. 30,468, 30,470 (1982).

2. The Washington Supreme Court's focus on whether the State would otherwise bear the full cost of foster care is incorrect and irreconcilable with congressional purpose

The Washington Supreme Court (Pet. App. A18, A28) reasoned that the use of Social Security benefits to meet current needs cannot be in a beneficiary's interest because the State would provide foster care services in any event. But nothing in the Social Security Act or implementing regulations suggests that the benefits are meant to be expended for current maintenance needs only as a last resort.

To the contrary, the express purpose of SSI benefits is to provide a "guaranteed *minimum* income level" for eligible children. *Sullivan* v. *Zebley*, 493 U.S. 521, 524 (1990) (emphasis added); see also 42 U.S.C. 1381. The payments are intended first and foremost to ensure, not funds for computers or vacations, but a "minimum level of income" for children who otherwise would not "have sufficient income and resources to maintain a standard of living at the established Federal minimum income level." 20 C.F.R. 416.110. Likewise, the purpose of Title II benefits is to provide workers and their families the "income required for *ordinary and necessary* living expenses." 20 C.F.R. 404.508(a) (emphasis added). Indeed, the goal of Title II payments, and Social Security benefits in general, is "to prevent public dependency," not to perpetuate it. *Mathews* v. *De Castro*, 429 U.S. 181, 186 n.6 (1976); see also H.R. Rep. No. 702, 95th Cong., 1st Sess. Pt. 1, at 3 (1977) ("the primary objective of the social security program [is] preventing dependency").

By allowing representative payees to use federal funds for their intended purposes of ensuring that current maintenance needs are met, and doing so in a way that simultaneously enhances the overall efficacy of the States' own welfare programs, the Commissioner fulfills the statutory purpose of reducing the dependency of federal beneficiaries on public welfare. See *Rowan Cos.* v. *United States*, 452 U.S. 247, 257 (1981) ("Congress enacted the Social Security Act * * * 'to reduce * * * dependency in the future'") (quoting H.R. Rep. No. 615, 74th Cong., 1st Sess. 3 (1935), and citing S. Rep. No. 628, 74th Cong., 1st Sess. 2 (1935)). Further, the Commissioner's interpretation of the Act to permit petitioners' practice advances Congress's goals in a way that does not penalize States for their own generosity in providing welfare programs. The Washington Supreme Court's decision, by contrast, creates disincentives for state welfare programs and treats Social Security benefits as a windfall

that *must* leave the beneficiary's dependency on other forms of public support unabated.

Two Social Security Rulings issued by the Commissioner confirm that the fact that government would otherwise provide for the beneficiary's care does not mean that benefits should not be applied to current maintenance costs. In a 1968 ruling, the Commissioner explained that, "[a]lthough the Welfare Department is currently paying for the beneficiary's care" in a nursing home, it was "improper" for the payee to divert the funds to other expenses. The representative payee was obliged first to apply the benefits to compensate the institution for the costs of the beneficiary's current maintenance. Social Security Ruling 68-18, 1968 WL 3918. See also Social Security Ruling 66-20, 1966 WL 3055 ("representative payee may properly use a part of the beneficiary's social security benefits to meet the customary charges made by the institution for the beneficiary's care and maintenance," even though the State would pay in any event for the beneficiary's confinement in a mental hospital based on criminal insanity).[3] The Commissioner's longstanding position on the question presented here is thus the product of thorough deliberation and practical experience in administering the Social Security program. See *Barnhart* v. *Walton*, 122 S. Ct. 1265, 1269-1273 (2002).

Furthermore, nothing in the Washington Supreme Court's rationale is restricted to state agencies. The same

[3] Social Security Rulings are binding interpretations and statements of policy for the agency. See 20 C.F.R. 402.35(b)(1) (2001); 20 C.F.R. 422.408 (1970). In addition, an advisory committee appointed by the Commissioner to study representative payment issues reviewed the question of whether representative payees should "reimburse" custodial institutions for the cost of the beneficiary's care. Social Security Admin., *Final Report of the Representative Payment Advisory Comm.* 35 (Nov. 1996). The Committee concluded that benefits should "be used to pay for 'cost of care' unless a compelling reason to do otherwise can be demonstrated." *Id.* at 37.

logic would dictate that parents serving as representative payees could not ordinarily apply their children's benefits to a monthly grocery or clothing bill, because the law obliges those parents, just as it does petitioners, to support their children's basic needs irrespective of the Social Security benefits. See Wash. Rev. Code Ann. § 74.20A.010 (West 1993). Under the Washington Supreme Court's rationale, only if the parents could demonstrate, to the satisfaction of potential federal auditors, that they would have been unable to meet the children's basic needs but for the Social Security benefits could they apply those funds for the purpose that Congress intended. Respondents offer no evidence that Congress intended the Social Security program to entail such a profound intrusion into traditional parental judgments.[4] And nothing in law or logic supports differential treatment for state government payees, who stand *in loco parentis* for the foster children. To the contrary, the statutory scheme envisions that all representative payees will use benefits to meet current maintenance expenses, without considering what would happen in a hypothesized world without such benefits.

[4] See POMS GN 00602.020 (where child resides in a household with others, benefits may be contributed to basic household expenses such as food and housing); *In re Guardianship of Nelson*, 547 N.W.2d 105, 108, 109 (Minn. Ct. App. 1996) (because Social Security benefits are "not a windfall" for the beneficiary, "a representative payee parent can use his or her child's social security survivor benefits for the child's current maintenance regardless of the parent's financial ability to meet those needs"); *Jahnke* v. *Jahnke*, 526 N.W.2d 159, 163-164 (Iowa 1994) ("There is no federal requirement that a parent's independent assets be exhausted before the child's benefits may be used for current maintenance."); *Mellies* v. *Mellies*, 815 P.2d 114, 117 (Kan. 1991) (parent "had no obligation to exhaust his personal finances in providing for [child's] support before spending any of [child's] social security benefits on the child's maintenance"; requiring such exhaustion "would place an intolerable burden on a surviving parent").

Finally, the Washington Supreme Court's rule that Social Security benefits cannot supplant other funds available to meet current needs would threaten significant disparities within families and the foster care system. In natural families struggling monthly to meet their basic needs, those children receiving Social Security benefits could be provided with trust funds or athletic equipment (Pet. App. A102-A105), while their unsubsidized siblings might have to do without. See POMS GN 00602.020(B)(3) (benefits can be used to support the family as a unit because maintaining "[t]he overall well being and stability of the family unit is of value to the child beneficiary"); cf. *Bowen* v. *Gilliard*, 483 U.S. 587 (1987).

Likewise, within foster families, foster children who do not receive Social Security benefits would have fewer amenities than those who do, and the level of payments for each child's basic foster care (as well as for meeting the special needs of children not receiving Social Security benefits) might have to be reduced to make up for the diversion of the Social Security benefits to purchasing special items for the approximately 15% of foster children who do receive Social Security benefits. The fueling of such divisions and inequities would not be in any child's best interests. And the end result of such a scheme would be that the use of Social Security benefits to buy computers or vacations would be less suspect and less scrutinized than a decision to buy food or shoes. That result would stand congressional intent on its head.[5]

[5] Under the Washington Supreme Court's rationale, even if petitioners dedicated 90% of each month's Social Security benefits to the beneficiary's special needs, the dedication of the remaining 10% of the funds to current maintenance would be prohibited.

3. State payees make a vital contribution to the functioning of the Social Security system

The Washington Supreme Court's holding was premised on the assumption (Pet. App. A18) that foster children would be better off with any representative payee other than the State. That assumption blinks reality. In the first place, there often are no other representative payees for such children. Their very presence in the foster care system suggests a lack of supportive, reliable family members or other responsible adults.

Second, as evidenced by the support of children's organizations for petitioners (see Cert. Amicus Brief of the Children's Defense Fund, Catholic Charities USA, Child Welfare League of America, and Alliance for Children and Families), the States are structurally better equipped than most payees to recognize entitlements to benefits and to identify underlying disabilities and appropriate treatment regimens to be supported by such benefits. The State's pursuit of benefits on behalf of the child, moreover, can increase the prospects for family reunification or adoption, by alleviating the financial pressures that a disability might otherwise create. See *id.* at 15-17.

Third, nothing in the record or the Commissioner's experience substantiates the Washington Supreme Court's supposition that petitioners do not serve their beneficiaries as well or dedicate as much funds to special needs as private payees do. Private payees have the same legal ability to apply benefits to current maintenance needs as the States do. In the Commissioner's experience, moreover, the majority of representative payees do just that. See also Appellants' Supp. Reply Brief, Wash. S. Ct. 22 n.61 ("The record supports the conclusion that private payees follow the law and pay for current maintenance."). Further, in Congress's experience, private payees are not uniformly preferable to the States. For example, because family payees often have

to live with a beneficiary, there is sometimes a risk that those payees will simply turn over the benefits to the beneficiary in an effort to avoid confrontation or to reduce intrafamilial tension. See H.R. Rep. No. 506, 103d Cong., 2d Sess. 58 (1994). In addition, the General Accounting Office has reported that, for beneficiaries suffering from drug or alcohol abuse, "approximately half of the family and friends who serve as representative payee exercise incomplete control over the beneficiaries' finances." *Ibid.*

Congress has consistently endorsed the role served by States as representative payees. The Social Security Act, for example, requires a system of annual accounting for all representative payees, except for State institutions. 42 U.S.C. 405(j)(3)(A) and (B), 1383(a)(2)(C)(i) and (ii). With respect to state payees, Congress left the Commissioner "flexibility to establish more appropriate and effective systems of auditing," suggesting only that review should be conducted at least triennially. H.R. Conf. Rep. No. 1039, 98th Cong., 2d Sess. 43 (1984).

In addition, when Congress overhauled the representative payee provisions in 1990, it directed the Commissioner to study "high-risk representative payees," with respect to whom experience had proven the danger of misuse or abuse to be heightened. 42 U.S.C. 405 note; H.R. Conf. Rep. No. 964, 101st Cong., 2d Sess. 930-931 (1990). Congress included in the category of high-risk payees the very alternative payees proposed by respondent (Supp. Br. in Opp. to Stay 5-6): "non-relative representative payees who do not live with the beneficiary," and "those who serve as a representative payee for five or more beneficiaries (under title II, title XVI or a combination thereof) and who are not related to them." *Id.* at 931; see 42 U.S.C. 405 note. Congress, however, expressly excepted from the category of high-risk payees "State governmental institutions." *Ibid.* The ensuing study revealed that public officials who serve as representative

payees "were least likely to raise concerns about performance—no incidents [of questionable or deficient performance] were found in the study." Secretary of Health & Human Servs., *Report to Congress: High-Risk Representative Payee Study* 4 (Nov. 1992); see also *id.* App. D, at 1 (state and local social service agencies had satisfactory performance in 97.2% of cases studied); *id.* App. D, at 3 (no deficient or questionable performances found where social worker or government representative is payee). Accordingly, the Washington Supreme Court's judgment that State payees are inherently less responsible than private payees is not a view that either Congress or the Commissioner shares.[6]

Congress's differential treatment of state payees recognizes that States execute their role as sovereigns charged with the well-being of their citizens and sworn to uphold and protect the children's rights. Because States have an independent duty to provide full care for foster children regardless of any federal benefits they may receive, States have no financial incentive to divert the funds from satisfying the needs of the beneficiary. States also have a long-term interest in maximizing the well-being and potential of children in their care, because those children will likely grow to be adult residents of the State.

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[6] This is not to suggest that private payees are inherently suspect. In the Commissioner's view, many perform their duties in exemplary fashion and make a vital contribution to the Social Security program. The 1990 statute and its legislative history simply reflect that Congress viewed the probability of abuse or misuse to be higher for some categories of private payees than for state agencies.

B. Petitioners' Use Of Social Security Benefits To Meet The Beneficiaries' Current Needs Is Consistent With The Social Security Act's Anti-Alienation Provision

The Social Security Act's anti-alienation provision provides:

> The right of any person to any future payment under this subchapter shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.

42 U.S.C. 407(a); see also 42 U.S.C. 1383(d)(1). The Washington Supreme Court held (Pet. App. A28-A29) that petitioners' use of foster children's benefits to pay for their current needs and maintenance—a practice expressly permitted by the representative payee provisions of the Act and regulations—violates the anti-alienation provision. That conclusion is without merit.

1. The statutory text permits petitioners' payments

The Washington Supreme Court's holding lacks any grounding in the text of the anti-alienation provision. Petitioners' expenditure of the funds for the use and benefit of the beneficiary does not amount to a transfer or assignment of the right to future payments. To the contrary, petitioners' service as representative payee is what has made it possible for the respondent foster children to receive their individual federal benefits on an ongoing basis. Nor does a payee's lawful and proper application of benefits to a beneficiary's current needs bear any resemblance to the execution of a judgment, a levy, attachment, or garnishment, or to the operation of any bankruptcy or insolvency law. Indeed, if routine payments by a representative payee fell within those terms, then the anti-alienation provision would render the

entire representative payee program inoperable. Courts, however, will not construe one statutory provision so as to render another nugatory. *Fidelity Fed. Sav. & Loan Ass'n* v. *De la Cuesta*, 458 U.S. 141, 163 (1982).

The Washington Supreme Court (Pet. App. A20-A29) suggested that petitioners' application of the benefits constitutes "other legal process" prohibited by the anti-alienation provision, stressing that Section 407 should be given an "expansive interpretation," *id.* at A23. But it is one thing to afford statutory text a broad interpretation; it is quite another thing to abandon text altogether. The phrase "other legal process" simply cannot be equated with "any accounting process" or "any process"—yet that is exactly what the court did here.

In common usage, legal process is "any means used *by a court* to acquire or exercise its jurisdiction over a person or over specific property." *Nevada* v. *Hicks*, 533 U.S. 353, 364 (2001) (emphasis added); see also *Rose* v. *Rose*, 481 U.S. 619, 643 (1987) (Scalia, J., concurring in part and concurring in the judgment) (describing reference in analogous anti-alienation provision to "attachment, levy, or seizure by any legal or equitable process whatever" as referring to "judicial processes"); *Black's Law Dictionary* 1085 (5th ed. 1979) (defining "legal process" in part as "a summons, writ, warrant, mandate, or other process issuing from a court").

The statute, moreover, does not prohibit any "legal process," but "*other* legal process." It is a well-established rule of statutory construction that, "[w]here general words follow specific words in a statutory enumeration, the general words are construed to embrace only objects similar in nature to those objects enumerated by the preceding specific words." *Circuit City Stores, Inc.* v. *Adams*, 532 U.S. 105, 114-115 (2001); see also *Gutierrez* v. *Ada*, 528 U.S. 250, 255 (2000) ("words and people are known by their companions"). Here, Congress's use of the word "other" makes explicit its intent

to limit "legal process" to the context established by the preceding examples. "[O]ther legal process" thus must be construed as embracing only mechanisms similar to execution, levy, attachment, and garnishment, all of which typically require some form of judicial or quasi-judicial intervention and result in an involuntary and coercive transfer of funds.

The Commissioner, whom Congress has charged with interpreting and implementing the Social Security Act, see, *e.g.*, 42 U.S.C. 405(a), similarly defines the "legal process" covered by the anti-alienation provision as "the means by which a court (or agency or official authorized by law) compels compliance with its demand; generally, it is a court order." POMS GN 02410.001(B)(2); see also *id.* GN 02410.200(B) (legal process is "any writ, order, summons or other similar process in the *nature of garnishment*. It may include, but is not limited to, an attachment, writ of execution, income execution order or wage assignment that is issued by a court of competent jurisdiction * * * or [a]n authorized official pursuant to an order of a court of competent jurisdiction or pursuant to State or local law; [a]nd is directed to a governmental entity."). That construction of the anti-alienation provision—which does not encompass petitioners' conduct here—is entitled to deference. See *Walton*, 122 S. Ct. at 1269-1273; *Shalala* v. *Guernsey Mem'l Hosp.*, 514 U.S. 87, 97-99 (1995). Deference is particularly appropriate because of the "statute's complexity, the vast number of claims that it engenders, and the consequent need for agency expertise and administrative experience" to prevent a construction of the anti-alienation provision that would confound and frustrate the routine operation of the representative payee system. *Walton*, 122 S. Ct. at 1273.

Nothing in the legislative history of the anti-alienation provision counsels otherwise. That provision has been in the Social Security Act since its inception in 1935. Committee Reports merely paraphrase the statutory language, and thus

provide no support for the Washington Supreme Court's textually untethered interpretation. See H.R. Rep. No. 615, *supra*, at 21; S. Rep. No. 628, *supra*, at 32; H.R. Rep. No. 728, 76th Cong., 1st Sess. 45 (1939); S. Rep. No. 734, 76th Cong., 1st Sess. 53 (1939). "It is not the province of state courts to strike a balance different from the one Congress has struck." *Hisquierdo* v. *Hisquierdo*, 439 U.S. 572, 590 (1979) (striking down judicially crafted modification of anti-alienation provision).

2. The use of Social Security funds to meet current needs is consistent with the purpose of the anti-alienation provision

Petitioners' practice also comports with the purpose of the anti-alienation provision, which is to protect social security beneficiaries and their dependents from those who seek to divert the funds to satisfy *past* debts rather than preserving them to meet the beneficiaries current needs. See *Mason* v. *Sybinski*, 280 F.3d 788, 793 (7th Cir. 2002), petition for cert. pending, No. 01-1653 (filed May 8, 2002); cf. *Rose*, 481 U.S. at 630 (purpose of analogous anti-alienation provision for veterans benefits is to "prevent the deprivation and depletion of the means of subsistence of veterans dependent upon these benefits as the main source of their income"); *Hisquierdo*, 439 U.S. at 584 (anti-alienation provisions "ensure[] that the benefits actually reach the beneficiary"); *Porter* v. *Aetna Cas. & Sur. Co.*, 370 U.S. 159, 162 (1962) (purpose of veterans' provision is to preserve funds "for the maintenance and support of the beneficiaries"); see also *Philpott* v. *Essex County Welfare Bd.*, 409 U.S. 413, 416 (1973) (analogy to veterans' provision "is relevant" to construction of Social Security Act's counterpart).

Petitioners' application, in its authorized capacity as representative payee, of Social Security benefits to the monthly "maint nce and support of the beneficiar[y]" children, *Porter*, 370 U.S. at 162, bears no relationship to the involun-

tary diversions by those outside the statutory scheme targeted by the anti-alienation provision. By contrast, respondents' plan to store up benefits or dedicate them entirely to other purposes, impervious to the beneficiaries' resulting complete dependency on public welfare to meet their current needs, defies congressional purpose.

The Washington Supreme Court repeatedly characterized petitioners as a creditor of the foster child (Pet. App. A19-A20, A28), and used that label to explain why it believed petitioners' payments for current maintenance were prohibited. But petitioners are not creditors of a beneficiary foster child. The child is under no legal obligation to pay for his own foster care. It is the parents, not the child, who bear such responsibility under Washington law. Wash. Rev. Code Ann. § 74.20A.010 (West 1993). Furthermore, petitioners do not provide their services "for consideration," and thus do not fall within the plain language of the Social Security Act's provision identifying the type of "creditor" that generally may not serve as a representative payee. 42 U.S.C. 405(j)(2)(C)(i)(III), 1383(a)(2)(B)(iii)(III).[7]

3. Petitioners' practice is consistent with this Court's precedent

Philpott v. *Essex County Welfare Board*, *supra*, and *Bennett* v. *Arkansas*, 485 U.S. 395 (1988) (per curiam), offer respondents no support. In *Philpott*, a state welfare board

[7] In any event, characterization of the States as creditors would not trigger the anti-alienation provision. The statute and regulations permit some "creditors" to serve as representative payees, particularly when those creditors are responsible for providing the beneficiary's current needs and maintenance on a daily basis. See 42 U.S.C. 405(j)(2)(C)(iii)(II), 1383(a)(2)(B)(v)(I) (legal guardian or legal representative of beneficiary); cf. 42 U.S.C. 405(j)(2)(C)(iii)(III), 1383(a)(2)(B)(v)(III) ("a facility that is licensed or certified as a care facility"). Further, it is generally appropriate for a representative payee to apply Social Security funds to discharge a debt "if the current and reasonably foreseeable needs of the beneficiary are met." 20 C.F.R. 404.2040(d), 416.640(d).

(which was not a representative payee) "sued to reach the bank account" of a welfare recipient who had promised to reimburse the board for any benefits received. 409 U.S. at 415. This Court held that the lawsuit fell within the plain meaning of the anti-alienation provision because it amounted to an indisputable use of "legal process" to compel an involuntary surrender of benefits to satisfy a debt. *Id.* at 415-416. The Washington Supreme Court seized upon (Pet. App. A20, A29) this Court's statement that the anti-alienation provision "imposes a broad bar against the use of any legal process to reach all social security benefits." *Philpott*, 409 U.S. at 417. The very next sentence of this Court's opinion makes clear, however, that the reference to "broad" coverage referred, not to an expansive construction of "legal process," but to ensuring the provision's application to "all claimants, including a State," who invoke such legal processes. *Ibid.* This Court simply refused to carve out an exception to the plain language that would permit certain creditors to apply traditional legal processes to seize benefits. Likewise, in *Bennett*, Arkansas (which was not a representative payee) sought "to attach" Social Security benefits paid to prison inmates by "fil[ing] separate actions in state court." 485 U.S. at 396. This Court held that the anti-alienation provision "unambiguously rule[d] out" that "attempt to attach Social Security benefits." *Id.* at 397. The Court once again declined to imply an exception from explicit language just because the State "provided the recipient with 'care and maintenance.'" *Ibid.*

But this Court's straightforward refusal in *Philpott* and *Bennett* to imply an exception to conduct falling squarely *within* the statutory text gives no license to courts to expand the anti-alienation provision to practices that fall far beyond any ordinary understanding of the text and that are specifically permitted by the Act's representative payee provision.

Moreover, the anti-alienation provision is designed to guard against the self-interested diversion of benefits to meet a creditor's own needs, which could "depriv[e] and deplet[e]" the beneficiary's very "means of subsistence." *Rose*, 481 U.S. at 630 (quoting S. Rep. No. 1243, 94th Cong., 2d Sess. 147-148 (1976)). But a representative payee, unlike a creditor, must use Social Security payments "for the use and benefit of the beneficiary," in the manner and for the purposes that the payee determines "to be in the best interests of the beneficiary." 20 C.F.R. 404.2035(a), 416.635(a). Further, the payee may use the benefits to discharge a debt if, and only if, "the current and reasonably foreseeable needs of the beneficiary are met" first. 20 C.F.R. 404.2040(d), 416.640(d). Also, representative payees (including state agencies and officials like petitioners) are appointed only after an individualized investigation by the Social Security Administration that examines the applicant's history, commitment to the child, and ability to manage the benefits properly and in the best interests of the child. 42 U.S.C. 405(j)(2)(A) and (B), 1383(a)(2)(B)(i) and (ii); 20 C.F.R. 404.2020, 416.620. The Administration will *not* "routinely appoint the social agency as payee just because a child is in foster care," but will instead choose the payee that "will serve the best interests of the beneficiary." Social Security Admin., Office of Program Benefits, *Policy Instruction GS 01-00-OPB* at 1 (Mar. 29, 2000).

The fact that one appropriate use of the funds for the benefit of the beneficiary—discharging current needs—coincides with an expense the payee would otherwise bear does not change the analysis. That ancillary benefit to the representative payee does not alter the fact that the beneficiary's current and foreseeable needs have been satisfied, and the core purpose of the Social Security benefits has been effectuated.[8]

4. Labeling petitioners' practice a "reimbursement" is immaterial

The Washington Supreme Court placed great weight (*e.g.*, Pet. App. A19, A28) on its characterization of petitioners' conduct as "reimburs[ing]" itself. In so holding, the court completely disregarded the district court's uncontested factual finding that the "reimbursement" takes place "only in the accounting sense" of signifying that petitioners "must expend the money up-front" before they claim the federal funds. *Id.* at A61. In other words, petitioners apply a foster child's benefits only to expenses that were actually incurred on his or her behalf. It is difficult to see how the beneficiary's interests would be better served by a scheme that applied the money in anticipation of hypothesized expenditures and, indeed, in advance of even knowing if the child will spend a full month in foster care.

Furthermore, if such "reimbursements" offended the Social Security Act, then legions of representative payees would be disqualified. Because Title II benefits are disbursed with a one-month time lag (*i.e.*, January's benefits are issued in early February), see POMS GN 02401.001, private payees as well as public ones often expend funds in advance to meet a beneficiary's needs and then reimburse themselves for the expense when the benefit check arrives. Under the

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[8] See *Mason*, 280 F.3d at 792-794 (state hospitals, as representative payees, may withdraw Social Security benefit payments from beneficiaries' trust accounts to pay for institutional costs); *King* v. *Schafer*, 940 F.2d 1182 (8th Cir. 1991) (state mental health institutions, as representative payees, may apply Social Security benefits to patients' monthly charges for care and treatment), cert. denied, 502 U.S. 1095 (1992); *C.G.A.* v. *State*, 824 P.2d 1364, 1368-1369 & n.14 (Alaska 1992) (State, as representative payee, may devote Social Security benefits to authorized expenditures, including foster care); *Econolo* v. *Division of Reimbursements of the Dep't of Health & Mental Hygiene*, 769 A.2d 296, 309 (Md. Ct. Spec. App. 2001).

Washington Supreme Court's cramped view of proper expenditures, a parent serving as payee could not buy clothes for her child on January 20th and then reimburse herself for that expense when the benefit check arrives two weeks later. The regulations, however, anticipate such indirect payments for current maintenance items, because they define "current maintenance" as the "*cost incurred in obtaining* food, shelter, clothing, medical care, and personal comfort items." 20 C.F.R. 404.2040(a), 416.640(a) (emphasis added), rather than the direct provision of those items. Therefore, there simply is no basis in law or logic, let alone the practical functioning of this nationwide benefit program, for respondents' position (Br. in Opp. 26 n.14) that a permissible "direct expenditure" of funds will be transmogrified into a prohibited use of funds if, for accounting purposes, it briefly "takes on the nature of a debt."

Respondents' position, moreover, is one of empty formalism. The anti-alienation provision would not bar petitioners from first paying the foster parent for the child's maintenance, in the amount of the Social Security benefits, and then separately reducing the State's monthly foster care payment to the family by that same amount. See, *e.g.*, *Sullivan* v. *Stroop*, 496 U.S. 478 (1990) (Title II benefits may be counted to reduce amount of benefits provided under the Aid to Families with Dependent Children program). The end result of such a scheme for the beneficiary would be the same—the foster parent would, of necessity, apply the amount of the Social Security benefits towards the cost of current maintenance. The financial effect on the State also would be the same—the amount of its own funds expended on current maintenance would be directly reduced by the amount of the Social Security benefits.

Petitioners' "reimbursement" method does, however, have significant advantages for the administration of the Social Security program. Their method (1) guarantees that

the funds are expended for the use and benefit of the foster child; (2) allows the representative payee, who owes an allegiance to the beneficiary's interests, to maintain control over the money, rather than foster parents, who have not been vetted by the Social Security Administration and who might change during the course of a month; (3) increases the opportunity for funds to be expended on special needs, because petitioners are institutionally positioned to absorb the cost of such additional expenses on top of routine monthly maintenance costs, whereas most foster parents may be unable or unwilling to bear the additional cost; and (4) allows for more accurate documentation of exactly how the Social Security funds were expended. Given the substantial advantages of petitioners' approach, there is no reason to construe the Act to prohibit it.

In conclusion, there can be little doubt that the Social Security Act's representative payee provisions permit a payee to apply Social Security benefits to the cost of the beneficiary's current needs and maintenance. And nothing in the anti-alienation provision prohibits petitioners, as representative payee, from doing so. The root of respondents' objection to petitioners' practice, instead, is a fundamental disagreement over whether a payment for current needs, which is defined by regulation as being "for the use and benefit" of the beneficiary, is also in that beneficiary's "best interests." 20 C.F.R. 404.2035(a), 416.635(a). The Commissioner has made clear that it is. And that position makes sense—parents as representative payees make the same decision every day, without any question that they are attending to their children's best interests by providing a home, food, and clothing.

Beyond that, the regulations expressly leave the choice as to which permissible expenditures are in the beneficiary's "best interests" (once current needs are satisfied) to the duly appointed and authorized representative payee, whether

that payee is a parent or a state agency. See 20 C.F.R. 404.2035(a), 416.635(a) (both: funds may be used for purposes that "he or she determines * * * to be in the best interests of the beneficiary"). The anti-alienation provision is not a tool for second-guessing the legally permissible choices and judgments of each of the more than 4.2 million representative payees who administer Social Security benefits to meet the needs of more than 6 million beneficiaries. Monitoring the misuse or abuse of a beneficiary's funds by a representative payee is the job of the Commissioner, who has established an administrative mechanism for policing such violations. 42 U.S.C. 405(j)(1)(A), 1383(a)(2)(A)(iii); POMS GN 00604.000 *et seq.* Courts and that administrative mechanism would be overwhelmed if they assumed the task not just of policing legally impermissible expenditures of funds, but of superintending, under the "best interests" rubric, the discretionary choices among legally permissible alternatives for meeting beneficiaries' needs that are made every day by the millions of representative payees in each of the fifty States.

CONCLUSION

The judgment of the Washington Supreme Court should be reversed.

Respectfully submitted.

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